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September 16, 2013

Stephanie Vaughn
Lower Passaic River Restoration Project
U.S. Environmental Protection Agency, Region II
290 Broadway
New York, New York 10007-1866

Via Electronic Mail

**Re: Notice of Force Majeure – Updated Conditions & Recommended Actions
Bridge Street Bridge –Mechanical Failure
River Mile 10.9 Removal Action
CERCLA Docket No. 02-2012-2015**

Dear Ms. Vaughn:

This letter is submitted on behalf of the Lower Passaic River Cooperating Parties Group (CPG) to provide continuing notice and updates in accordance with Section XVII of the "Administrative Settlement Agreement and Order on Consent for Removal Action," captioned "In the Matter of Lower Passaic River Study Area portion of the Diamond Alkali Superfund Site," CERCLA Docket No. 02-2012-2015 (AOC) of the Force Majeure event that has existed since August 31 due to the fact that the Bridge Street Bridge (hereafter Bridge), which is located at River Mile (RM) 5.41 and connecting Newark and Harrison, is currently inoperative.

The CPG has not been provided with a firm estimate as to when the Bridge will be returned to service. Only today, the CPG observed the removal of the shaft and gearing that failed on August 31 and the County workers and contractors offered no estimate of when the Bridge would be returned to service.

As a result of the Bridge mechanical failure, the CPG and its contractors have not been able to move barges to and from the Removal Areas since August 31. Dredging continued until September 5, at which time the CPG was forced to stop dredging because the loaded barge could not be transported down river and empty barges could not be transported up river. In summary, the Removal Action has come to a halt and no work has been completed in the last 11 days. Specifically, the following conditions currently exist or will be occurring:

- A barge loaded with RM 10.9 sediment has been located at the Removal Area since September 5 and will remain stranded until the Bridge is repaired or the US Coast Guard (USCG) directs the Counties to open the Bridge;
- Dredging equipment is stranded at the Removal Area and idle until empty barges are allowed passage upstream once the Bridge is repaired or the USCG directs the Counties to open the Bridge; and
- Clean Earth has other contractual obligations, specifically a USACE project where the facility will be receiving 750,000 cubic yards of sediment starting as early as late September. This project, unless delayed, will preclude Clean Earth from treating RM 10.9 sediment until at least April 2014 in part because of the NJDEP's

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Acceptable Use Determination (AUD) that precludes Clean Earth from treating sediment from other sources while treating RM 10.9 sediment.

Since August 31, the CPG has been working with its contractors to understand how the Removal Action could be continued while waiting for a decision on the Bridge. As a result, the CPG and its contractors have identified three actions by Federal and State authorities that can allow the Removal Action to continue and be completed in late December 2013 or early January 2014. It is imperative that a decision be made immediately as the CPG's contractors are incurring standby costs in the range of \$50,000 per day.

The RM 10.9 Removal Action can continue if the EPA, its Partner Agencies (i.e., USACE and NJDEP) and the USCG can immediately decide and initiate actions for all of the following issues:

1. The USCG must make a decision on the operation of the Bridge on September 16 either:
 - 1) directing the Counties to provide nightly manual openings of the Bridge until it is repaired; or,
 - 2) requiring that the Counties have the Bridge operational no later than October 9, in which case the USCG must direct the Counties to open the Bridge this week to allow for the movement downriver of the loaded barge and the demobilization from the Removal Area. If the Bridge is not operational by October 9, it will not be possible to complete the Removal Action by early January 2014.
2. The USACE delays the start of its contract with Clean Earth until the stabilization of RM 10.9 sediment is complete (or Issue 3 is favourably resolved). The CPG assumes that both EPA and USACE would deem as a higher priority the treatment and stabilization of sediment from a Time Critical Removal Action being conducted under the authority of an EPA AOC, such as the RM 10.9 Removal Action, than the processing of sediment from a navigational dredging project.
3. The NJDEP relaxes the requirements of the Clean Earth AUD and allows RM 10.9 sediment to be treated at the Clean Earth facility separately, but simultaneously with other sediment streams.

If the EPA, its Partner Agencies and the USCG can favourably resolve all three of these issues then the RM 10.9 Removal Action can be completed in calendar year 2013 (or early January 2014). Otherwise, the CPG respectfully requests immediate action on Items 1 and 2 of the following:

1. EPA approves the Force Majeure; extends completion of the Removal Action until 2014; and immediately grants permission for demobilization of the RM 10.9 Removal Action during the week of September 16.
2. USCG directs the Counties to manually open the Bridge two times during the week of September 16 to allow; (1) for demobilization of dredging equipment from the

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RM 10.9 Removal Area, and (2) the transport of the loaded barge to Clean Earth for treatment and disposal prior to Clean Earth initiating the decontamination required by the current NJDEP AUD.

3. NJDEP extends the terms/expiration dates of the Tidelands Licence, Waterfront Development Permit Equivalent and the current Clean Earth AUD for the RM 10.9 Removal Action until the estimated completion date of the Removal Action in 2014 (to be determined).
4. EPA and NOAA and its National Marine Fisheries Service approve a waiver of the fish window that extends from March 1, 2014 until June 30, 2014 to allow the RM 10.9 Removal Action following the completion of the USACE sediment processing at Clean Earth in April 2014.

The CPG appreciates the cooperation and efforts of EPA, its Partner Agencies, and the USCG and their assistance in resolving the situation with the Bridge and completing the RM 10.9 Removal Action. Nonetheless, prompt and immediate action on the part of Federal and State Agencies provides the only means to complete the RM 10.9 Removal Action in late December 2013 or early January 2014.

The CPG will continue to provide written and verbal updates as new information becomes available.

Please contact William Hyatt, Willard Potter or me if you require further information.

Very Truly Yours,
de maximis, inc.



Robert Law, Ph.D.
CPG Project Coordinator

cc:

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